

COMMONWEALTH OF MASSACHUSETTS

At the Supreme Judicial Court holden at Boston within and for said Commonwealth on
the fifth day of June, in the year two thousand and three:
present,

HON. MARGARET H. MARSHALL)	
)	
HON. JOHN M. GREANEY)	
)	
HON. RODERICK L. IRELAND)	
)	
HON. FRANCIS X. SPINA)	Justices
)	
HON. JUDITH A. COWIN)	
)	
HON. MARTHA B. SOSMAN)	
)	
HON. ROBERT J. CORDY)	

ORDERED: That Chapter Three of the Rules of the Supreme Judicial Court is hereby
amended as follows:

Rule 3:09:

By striking out Rule 3:09 and inserting in
lieu thereof the new Rule 3:09 attached
hereto.

The amendment accomplished by this order shall take effect on October 1, 2003.

<u>MARGARET H. MARSHALL</u>)	
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<u>JOHN M. GREANEY</u>)	
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<u>RODERICK L. IRELAND</u>)	
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<u>FRANCIS X. SPINA</u>)	
)	Justices
)	
<u>JUDITH A. COWIN</u>)	
)	
)	
<u>MARTHA B. SOSMAN</u>)	
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)	
<u>ROBERT J. CORDY</u>)	

Rule 3:09. CODE OF JUDICIAL CONDUCT

PREAMBLE

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, and Commentary. The text of the Canons and the Sections, including the Terminology Section, is authoritative, that is, it is intended to impose binding obligations the violation of which can result in disciplinary action. The Commentary, by explanation and example, provides interpretive guidance with respect to the obligations of the Canons and Sections. At times the Commentary also offers aspirational goals.

When the text of the Canons, Sections, or Commentary uses “shall” or “shall not,” it is intended to be authoritative. When “should” or “should not” is used (in Commentary) the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined.

When “may” is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Code must be read as a whole. Judges must be alert to the possibility that more than one Canon or Section may apply to a particular situation. As an example, before concluding that an action appears to be permitted by one of the more detailed provisions of the Code, the judge should consider whether, in the circumstances, the action is improper when measured against a more general provision, for instance, Section 2A. Occasionally a provision of the Code is explicitly stated as being “subject to the requirements of this Code,” or similar language. The absence of language to that effect elsewhere should not lull the judge into indifference to the rest of the Code when the judge focuses on a particular provision; every provision is subject to every other provision.

The Canons and Sections are rules of reason. Some conduct that may literally violate a provision of this Code will be permissible because it does not violate the policy behind the prohibition or is de minimis. In addition, not every violation of the Code should result in disciplinary action. Whether disciplinary action is appropriate, and, if it is, what degree of discipline should be imposed, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the violation, the existence (or not) of a pattern of improper activity, and the effect of the improper activity on others, on the public perception of others, or on the judicial system.

The Code is not intended as an exhaustive guide for the conduct of judges. For example, judges’ conduct is also governed by constitutional requirements, statutes, court rules, and decisional law. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions. The Code is intended to state basic standards which govern the conduct of all judges and to assist judges in

establishing and maintaining high standards of judicial and personal conduct.

TERMINOLOGY

Terms explained below are noted with an asterisk () in the Sections where they appear. In addition, the Sections where the terms appear are referred to after the explanation of each term below. Terms are not asterisked in Commentary or in this Terminology Section.*

“Court personnel” does not include the lawyers in a proceeding before a judge. See Sections 3B(4), 3B(5), 3B(7)(c), 3B(7)(c)(i), 3B(9), 3C(1), and 3C(2).

“De minimis” denotes an insignificant interest and therefore one that does not raise a reasonable question as to a judge’s impartiality. See Sections 3E(1)(f), (g) and (h).

“Economic interest” denotes ownership of a more than de minimis legal or equitable interest, except that:

(i) ownership in a mutual or common investment fund that holds securities is not an “economic interest” in such securities unless the judge participates in the management of the fund; a judge is not required to inquire as to the identity of the securities held by the fund.

(ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge’s spouse or child wherever residing, or by any other member of the judge’s family residing in the judge’s household, as an officer, director, advisor or other active participant in any organization does not create an “economic interest” in securities held by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in

a mutual insurance company, of a depositor in a mutual savings association, or of a member of a credit union, or a similar proprietary interest, is not an “economic interest” in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(iv) ownership of government securities is not an “economic interest” in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities. See Sections 3E(1)(f) and (g).

“Ex parte communication” denotes a communication, which occurs without notice to or participation by all other parties or lawyers for all other parties to the proceeding, between a judge (or by court staff on behalf of a judge) and (i) a party or a party’s lawyer or (ii) another person who is not a participant in the proceeding. See Sections 3B(7), 3B(7)(a), 3B(7)(a) (i) and (ii) and 3B(7)(e).

“Fiduciary” denotes an executor, administrator, trustee, guardian and other similar positions. See Sections 3E(1)(f), 4E, 4E(2), and 4E(3).

“Knowingly,” “knowledge,” “known” or “knows” denote actual knowledge of the fact in question. That a person has actual knowledge may be inferred from circumstances. See Sections 3B(7)(c)(iv), 3B(11), 3D(1), 3D(2), 3E(1)(d),(e),(f),(g) and (h).

“Law” denotes court rules as well as statutes, constitutional provisions, and decisional law. See Sections 2A, 3A, 3B(2), 3B(7), 3B(7)(b), 3B(7)(e), 3B(11), 4C(1), 4C(2), 4C(3), 4C(3)(b)(ii), 4D(5)(a), 4H(2), 4I, and 5A(3).

“Member of the judge’s family residing in the judge’s household” denotes any relative of a judge by blood, adoption, or marriage, a domestic partner, or a person with whom the judge maintains a close familial relationship, who resides in the judge’s household. See Sections 3E(1)(g), 4D(5), and 4D(5)(b).

“Political organization” denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office or passage of ballot questions. See Sections 5A(1)(a), (b), and (c).

“Relationship interest” denotes a relationship as an officer, director, advisor, or other active participant in the affairs of a party that has more than a de minimis legal or equitable interest. See Sections 3E(1)(f) and (g).

“Require.” The rules prescribing that a judge “require” certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term “require” in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control. See Sections 3B(4), 3B(5), 3B(6), 3B(9) and 3C(2).

“Third degree of relationship.” The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, or niece. See Section 3E(1)(h).

CANON 1**A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY**

A. An independent and honorable judiciary is indispensable to justice in our society. A judge shall participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards, so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Commentary:

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

A judicial decision or action determined by an appellate court to be incorrect either as a matter of law or as an abuse of discretion is not a violation of this Code unless

the decision or action is committed knowingly and in bad faith.

CANON 2

A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

A. A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Commentary:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. The test for imposition of sanction for violation of this Canon is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

B. A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness in an adjudicatory proceeding.

Commentary:

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead and the judicial title must not be used in conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of the judge or of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writing, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see Section 4D(5)(a) and Commentary.

A judge should be careful to avoid developing excessively close relationships with frequent litigants – such as municipal attorneys, police prosecutors, assistant district

attorneys, and public defenders – in any court where the judge often sits, if such relationships could reasonably tend to create either an appearance of partiality or the likely need for later disqualification under Section 3E(1)

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. A recommendation, written or otherwise, should not be made if the person who is the subject of the letter is or is likely to be a litigant in a contested proceeding before the judge's court.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, by responding to official inquiries concerning a person being considered for a judgeship, and by providing letters of recommendation and testimony, whether solicited or not, for judicial nominees. See also Canon 5 regarding use of a judge's name in political activities.

A judge must not testify voluntarily as a character witness in an adjudicatory proceeding because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness. Adjudicatory proceedings include not only proceedings before courts but also before administrative agencies, including disciplinary bodies.

C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, ethnicity, or sexual orientation. As long as membership does not violate any other provision of this Code, nothing in this Section bars membership in any official United States military organization, in any religious organization, or in any organization that is in fact and effect an intimate, purely private organization.

Commentary:

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Section 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges must be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members that do not stigmatize any excluded persons as inferior and therefore unworthy of membership.

Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from its membership or activities on the basis of race, sex, religion, national origin, ethnicity or sexual orientation, persons who would otherwise be admitted to its membership or activities. The purpose of Section 2C is to prohibit judges from joining organizations practicing invidious discrimination, whether or not their membership practices are constitutionally protected.

Although Section 2C relates only to membership, it would be a violation of Canon

2 and Section 2A for a judge to arrange a meeting at a club that the judge knows or should know practices invidious discrimination on the basis of race, sex, religion, national origin, ethnicity or sexual orientation in its membership or other policies, or for the judge regularly to use such a club. Moreover, public communication by a judge approving of invidious discrimination referred to in Section 2C gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity of the judiciary, in violation of Section 2A.

CANON 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

A. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law.* In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities

(1) A judge shall hear and decide matters assigned to the judge except those in which the judge is disqualified.

(2) A judge shall be faithful to the law* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge shall maintain order and decorum in proceedings before the judge.

(4) A judge shall be patient and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require* similar conduct of court personnel* and others.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status, and shall require* court personnel*and others not to do so.

(6) A judge shall require* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel, or others.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law*. A judge shall not initiate, permit, or consider any ex parte communication* concerning a pending or impending proceeding, except that:

(a) Where circumstances require, an ex parte communication* is authorized when it does not deal with substantive matters and is for scheduling or administrative purposes or emergencies provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication*, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication*

and allows them an opportunity to respond.

(b) [reserved]

(c) A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, subject to the following:

(i) a judge shall take all reasonable steps to avoid receiving from court personnel* or other judges factual information concerning a case that is not part of the case record. If court personnel* or another judge nevertheless bring non-record information about a case to the judge's attention, the judge may not base a decision on it without giving the parties notice of that information and a reasonable opportunity to respond. Consultation is permitted between a judge, clerk-magistrate or other appropriate court personnel and a judge taking over the same case or session in which the case is pending with regard to information learned from prior proceedings in the case that may assist in maintaining continuity in handling the case;

(ii) when a judge consults with a probation officer about a party in a pending or impending criminal or juvenile case, the consultation shall take place in the presence of the parties who have availed themselves of the opportunity to appear and respond;

(iii) a judge shall not consult with an appellate judge, or

a judge in a different trial court department, about a case that the judge being consulted might review on appeal; and

(iv) no judge shall consult with another judge about a case pending before one of them when the judge initiating the consultation knows* the other judge has a financial, personal or other interest which would preclude the other judge from hearing the case, and no judge shall engage in such a consultation when the judge knows* he or she has such an interest.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle civil matters pending before the judge.

(e) A judge may initiate, permit, or consider any ex parte communication* when authorized by law* to do so.

(8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

(9) Except as otherwise provided in this section, a judge shall abstain from public comment about a pending or impending Massachusetts proceeding in any court, and shall require* similar abstention on the part of court personnel*.

(a) A judge is permitted to make public statements in the course of his or her official duties or to explain for public information the procedures of the court, general legal principles, or what may be learned from the public record in a case.

(b) This Section does not prohibit judges from discussing, in legal

education programs and materials, cases and issues pending in appellate courts.

This education exemption does not apply, however, to comments or discussions that might interfere with a fair hearing of the case.

(c) This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, information acquired in a judicial capacity that by law* is not available to the public. When a judge, in a judicial capacity, acquires information, including material contained in the public record that is not yet generally known*, the judge must not use the information in financial dealings for private gain. Notwithstanding the provisions of Section 3B(9), a judge shall not disclose or use, for any purpose unrelated to judicial duties, information that, although part of the public record, is not yet generally known*, if such information would be expected unnecessarily to embarrass or otherwise harm any person participating or mentioned in court proceedings.

Commentary to Section 3B(1):

The obligation to hear and decide all assigned matters should not be construed to preclude a judge from requesting not to be assigned to a particular case or class of cases because of strongly held personal or moral beliefs.

Commentary to Section 3B(4):

The duty to conduct proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

Commentary to Section 3B(5):

A judge must refrain from speech, gestures, or other conduct that could reasonably be perceived as evidencing bias or prejudice and must require the same standard of conduct of others subject to the judge's direction and control, including those who are directly involved in courtroom proceedings.

A judge must perform judicial duties impartially and fairly. A judge who manifests any bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communications, can give to parties or lawyers in the proceeding, jurors, the media, and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as biased or prejudicial.

Commentary to Section 3B(6):

This section does not preclude legitimate advocacy when race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status are issues in the proceeding.

Commentary to Section 3B(7):

Section 3B(7) proscribes ex parte communications concerning a proceeding except to the limited extent permitted in Section 3B(7)(a) through (e).

Whenever the presence of a party or notice to a party is required by Section 3B(7), it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that the general prohibition against ex parte communications is not violated through law clerks and other court personnel.

Commentary to Section 3B(7)(c):

Section 3B(7)(c) authorizes consultation between a judge and court personnel whose job entails or includes assisting the judge in performing the judge's adjudicative responsibilities, for example clerk magistrates and their assistants, registers of probate and their assistants, and law clerks. A judge may discuss the facts of a pending or impending proceeding with such court personnel, but in view of the judge's obligation to decide a case only on the evidence presented, the judge's factual discussion may be based only on information in the case record. Accordingly, a judge may not solicit non-record factual information from court personnel about a case and must take reasonable steps to avoid receiving unsolicited non-record factual information from them. If, despite such efforts, the judge receives non-record factual information about a pending or impending case from court personnel (or indeed from any source), the judge may not base any decision in the case in whole or in part on that information unless the judge first gives the parties notice and an opportunity to respond.

Probation officers, like clerk magistrates, registers and their assistants, are court personnel who assist the judge in performing the judge's adjudicative responsibilities.

However, probation officers often work independently of the judge, since one of their most significant responsibilities is the community supervision of persons sentenced to probation by the court. From their work in the community, probation officers regularly obtain or receive factual information that is not part of a case record but that may have a direct bearing on a particular party in a case. In light of this fact, Section 3B(7)(c)(ii) provides that any consultation between a judge and a probation officer about a party in a specific criminal or juvenile case take place in the presence of the parties (or their counsel) who have availed themselves of the opportunity to attend, so that there is an opportunity to hear and respond to any information being conveyed by the probation officer. However, a judge may discuss with a probation officer *ex parte* the specifics of various available programs as long as there is no discussion about the suitability of the program for a particular party.

Section 3B(7)(c) permits a judge to consult with other judges, subject to the limitations set forth there. This is so whether or not the judges serve on the same court. A judge may not consult about a case with an appellate judge who might be called upon to review that case on appeal. The same holds true with respect to those instances in which a judge in one department of the trial court may be called upon to review a case decided by a judge in a different department; a criminal case in which the defendant seeks a review by a judge in the Superior Court of the bail determination made by a judge in the District Court is an example. The appellate divisions of the Boston Municipal Court and of the District Court present a special situation. The judges who sit as members of these appellate divisions review on appeal cases decided by judges who serve in the same court department. However, the designation of judges to sit on the appellate divisions changes quite frequently; every judge on the Boston Municipal Court will, and every judge on the

District Court may, serve for some time as a member of that court's appellate division.

In recognition of this fact, Section 3B(7)(c)(iii) does not bar judges in the same court department from consulting with each other about a case, despite the possibility that one of the judges may later review the case on appeal. However, when a judge is serving on an appellate division, the judge may not review any case that the judge has previously discussed with the judge who decided it; recusal is required.

Consultation between or among judges, if otherwise permitted under Section 3B(7)(c), is appropriate only if the judge before whom the case is pending does not abrogate the responsibility personally to decide it.

Commentary to Section 3B(7)(d):

Section 3B(7)(d) implicitly acknowledges the public policy that favors the settlement of civil cases and the understanding that a judge can play an important role in the settlement process. In settlement discussions, a judge may, with the prior consent of all parties, meet with parties and their counsel separately. The judge must inform all parties of any such meetings, but need not disclose what was discussed.

Commentary to Section 3B(7)(e):

Section 3B(7)(e) refers to an ex parte communication authorized by law. Examples include: the issuance of a temporary restraining order in certain circumstances, see, e.g., G. L. c. 209A, § 4 ; Mass. R. Civ. P. 65(a); the issuance of a pre-judgment attachment or trustee process, see Mass. R. Civ. P. 4.1(f), 4.2(g); the determination of fees and expenses for indigent persons, see G. L. c 261, §§ 27A - 27 G; the issuance of temporary orders related to child custody or vacation of the marital home where conditions warrant, see G. L. c. 208, §§ 28A, 34B; and an ex parte communication authorized or required under the Rules of Professional Conduct (S.J.C. Rule 3:07).

Commentary to Section 3B(8):

In disposing of matters promptly, efficiently, and fairly, a judge must give due regard to the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. When a judge encourages and seeks to facilitate settlement, the judge should not coerce the parties into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court personnel and litigants and their lawyers cooperate with the judge to that end.

Commentary to Section 3B(9):

The requirement that a judge abstain from public comment regarding a pending proceeding continues during any appellate process and until final disposition. A case is impending for purposes of this section if it seems probable that a case will be filed, if charges are being investigated, or if someone has been arrested although not yet charged.

“Any court” for purposes of this section means any state or federal court within the United States or its territories.

A judge may, consistent with this section, make public statements about a pending or impending case in the course of his or her official duties. “In the course of his or her official duties” includes statements made in the courtroom and on the public record as well as those statements made by a judge in the performance of his or her administrative duties.

A judge may, consistent with this section, explain what may be learned from the public record in a case, including pleadings, documentary evidence, and the tape recording or stenographic record of proceedings held in open court. The judge may not discuss the rationale for a decision, however, unless the judge is repeating what was already made part of the public record. Speaking to a journalist is public comment even where it is agreed that the statements are “off the record.” See also Section 3B(11).

Commentary to Section 3B(10):

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case. Commendations or criticisms of verdicts may also call into question the judge's ability to rule impartially on any post-trial motions, or on remand, in the same case.

Commentary to Section 3B(11):

Information that by law is not available to the public includes but is not limited to information that is sealed by statute, court rule, or court order, all of which is absolutely non-disclosable for any purpose unrelated to judicial duties.

Among the factors to be considered in determining whether the information "contained in the public record that is not generally known" would be expected unnecessarily to embarrass or otherwise harm a person are whether there is a valid public purpose for disclosure or whether the disclosure is idle chatter or gossip.

There are other rules (for example, Section 2A), that relate to the subject matter

of this rule.

C. Administrative Responsibilities

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration, and cooperate with other judges and court personnel*.

(2) A judge shall require* court personnel*, including personnel who are directly involved in courtroom proceedings over which the judge presides, to observe the standards of fidelity and diligence that apply to the judge.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments of counsel and staff. The judge shall exercise the power of appointment only on the basis of merit, avoiding appointments based on nepotism or personal or political favoritism. The judge shall not approve compensation of appointees beyond the fair value of service rendered.

Commentary to Section 3C(4):

Appointments made by the judge include, but are not limited to, counsel, persons such as guardians *ad litem* and special masters, and court personnel subject to appointment by the judge. See S.J.C. Rule 1:07 regarding fee generating appointments and the maintenance of appointment dockets.

D. Disciplinary Responsibilities

(1) A judge having knowledge* of facts indicating a substantial likelihood that another judge has committed a violation of the Code that raises a significant question about that judge’s honesty, integrity, trustworthiness, or fitness for judicial office shall inform the Chief Justice of this court and of that judge’s court. A judge having knowledge* of facts indicating a substantial likelihood that another judge has committed a violation of the Code that does not raise a significant question of that judge’s honesty, integrity, trustworthiness, or fitness for judicial office shall take appropriate action.

(2) A judge having knowledge* of facts indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct that raises a significant question as to that lawyer’s honesty, integrity, trustworthiness, or fitness as a lawyer shall inform the Bar Counsel’s office of the Board of Bar Overseers.

Commentary:

This Section requires judges to report conduct indicating a substantial likelihood of a serious violation of professional conduct by judges or lawyers together with the factual basis for this conclusion. Even an apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. The word “significant” in the Section refers to the seriousness of the possible offense and not the quantum of evidence of which the judge is aware.

Judges are required by this Section to participate actively in maintaining and preserving the integrity of the judicial system. The rule is necessary because judges make up a significant group that may have information about colleagues’ misconduct. For this

reason, judges have an opportunity and a special duty to protect the public from the consequences of serious misconduct and the potential harmful results of other violations of the Code.

The following examples are not exhaustive but include misconduct that has been found in particular factual circumstances to raise a significant question about honesty, integrity, trustworthiness, or fitness for judicial office: tampering with or attempting to influence improperly a judicial action of another judge; giving false testimony under oath; tampering with or falsifying court papers to support judicial action; grossly abusing the bail statutes; failing to recuse at a hearing when the judge is engaged in a personal financial venture with lawyers or parties; misusing appointment power to show favoritism; using court employees during regular work hours for private benefit; engaging in inappropriate political activity, such as attending fundraisers, soliciting money for candidates or causes, and lobbying except on matters concerning the law, the legal system, or the administration of justice; engaging in a pattern of any of the following activities: abuse of alcohol in public, indifference to case law or facts, use of injudicious or abusive language on the bench, or failure to devote full-time to judicial work.

Other Code violations by a judge that are less serious still require appropriate action by the judge who has knowledge of them. Examples include but are not limited to: speaking or being the guest of honor at an organization's fund-raising event; serving as a director of a family business; serving as the executor of an estate of a relative or person with whom the judge had no close familial relationship; frequently starting court business late or stopping it early; soliciting advice about pending cases from a friend who is a law professor without disclosure; placing or leaving a bumper sticker for a political candidate on a vehicle the judge regularly drives; frequently delaying making decisions in cases.

Appropriate action by a judge who has knowledge of these less serious Code violations may include: speaking to the other judge directly; asking someone else who may be more appropriate to speak to that judge; reporting to the presiding judge of the court where the violation occurred or where that judge often sits; reporting to the Chief Justice of that judge's court; and speaking to Judges Concerned for Judges or calling the judicial hotline maintained by Lawyers Concerned For Lawyers, Inc. This list of actions is illustrative and not meant to be limiting.

While a measure of judgment is required in complying with this Section, a judge must report lawyer misconduct that, if proven and without regard to mitigation, would likely result in an order of suspension or disbarment, including knowingly making false statements of fact or law to a tribunal, suborning perjury, or engaging in misconduct that would constitute a serious crime. A serious crime is any felony, or a misdemeanor a necessary element of which includes misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy, or solicitation of another to commit the above crimes. Section 3D(2) does not preclude a judge from reporting a violation of the Massachusetts Rules of Professional Conduct in circumstances where a report is not mandatory. Reporting a violation is especially important where the victim is unlikely to discover the offense. If the lawyer is appearing before the judge, a judge may defer making a report under this Section until the matter has been concluded, but the report should be made as soon as practicable thereafter. However, an immediate report is compelled when a person will likely be injured by a delay in reporting, such as where the judge has knowledge that a lawyer has embezzled client or fiduciary funds and delay may impair the ability to recover the funds.

(3) [reserved]

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer;

(b) the judge served as a lawyer in the matter in controversy;

(c) a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter in controversy;

(d) the judge has been, or is to the judge's knowledge* likely to be, a material witness concerning the matter in controversy;

(e) the judge has personal knowledge* of disputed evidentiary facts concerning the matter in controversy;

(f) the judge is a party to the proceeding or an officer, director, or trustee of a party or the judge knows*, or reasonably should know*, that he or she, individually or as a fiduciary*, has (i) an economic interest* in the subject matter in controversy or in a party to the proceeding, which interest could be substantially affected by the outcome of the proceeding, (ii) a relationship interest* to a party to the proceeding where the party could be substantially affected by the outcome of the proceeding or (iii) any other more than de minimis* interest that could be substantially affected by the outcome of the proceeding;

(g) the judge knows*, or reasonably should know*, that the judge's spouse or child wherever residing, or any other member of the judge's family residing

in the judge's household,* has (i) an economic interest* in the subject matter in controversy or in a party to the proceeding, which interest could be substantially affected by the outcome of the proceeding, (ii) a relationship interest* to a party to the proceeding where the party could be substantially affected by the outcome of the proceeding or (iii) any other more than de minimis* interest that could be substantially affected by the outcome of the proceeding; or

(h) the judge's spouse or domestic partner, as well as a person within the third degree of relationship* to the judge, the judge's spouse, or the judge's domestic partner, or a spouse or domestic partner of such other person, (i) is a party to the proceeding or an officer, director, or trustee of a party, (ii) is acting as a lawyer in the proceeding, (iii) is known* by the judge to have any more than de minimis* interest that could be substantially affected by the outcome of the proceeding, or (iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

(2) [reserved]

Commentary:

Under this rule, a judge shall disqualify himself or herself whenever the judge's impartiality might reasonably be questioned, regardless of whether any specific rules in Sections 3E(1)(a) through (h) apply. For example, even though a judge may not be required to disqualify himself or herself because of an economic or relationship interest, the judge may be required to do so on other grounds. A more than de minimis interest, under Sections 3E(1)(f)(iii), (g)(iii), and (h)(iii) may include non-financial interests; as an example, support by the judge of an organization advocating a particular position, where the interests of the organization could be substantially affected by the outcome of the proceeding.

If the judge believes there is no real basis for disqualification, a judge may, but is not required to, disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification. See Commentary to Section 3F.

A judge is not necessarily disqualified if a lawyer in a proceeding is affiliated with a legal organization with which the spouse or a relative of the judge is affiliated. Disqualification may be required in appropriate circumstances, including the closeness of the relationship of the relative with the judge, where the judge's impartiality might reasonably be questioned. Disqualification may also be required where the judge knows that the judge's spouse or relative has an interest in a legal organization and that the organization could be substantially affected by the outcome of the proceeding. See Sections 3(E)(1)(g)(iii) and (h)(iii).

In determining whether an interest could raise a reasonable question as to a judge's impartiality, the judge should consider, among other factors, the dollar value of the interest and whether the interest comprises a substantial portion of the judge's total economic holdings.

In particular circumstances, a judge may need to consider carefully relationships other than those specifically mentioned in Section 3E(1) - for example, a fiancé (or fiancée) or a very close friend - to determine whether disqualification is required.

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(c). A judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and, unless remittal under Section 3F is available, appropriate, and accomplished, use reasonable efforts to transfer the matter to another judge as soon as possible.

If a judge were in the process of negotiating for employment with a law firm or other entity, the judge would be disqualified from any matters in which the law firm or other entity appeared, unless remittal under Section 3F is available, appropriate, and accomplished.

F. Remittal of Disqualification.

(1) A judge disqualified by the terms of Section 3E may, instead of withdrawing from the proceeding, disclose on the record the basis of the judge's disqualification and ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If, following disclosure of any basis for disqualification other than for cases in which remittal is not available, the parties and lawyers, without participation of the judge, all agree that the judge should not be disqualified, the judge may participate in the proceeding. The judge shall permit an opportunity for the attorneys to consult with their clients regarding this issue. The agreement shall be incorporated in the record of the proceeding.

(2) Remittal is not available in cases in which the judge is disqualified under Sections 3E(1)(a), (b), or (d).

Commentary:

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not hear comment on possible remittal unless the lawyers jointly propose remittal after consultation as provided in the Section. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement. There are circumstances when other provisions, such as Section 2A, may override the remittal procedure of Section 3F. An example would be where a judge's close relative has supervisory responsibility over attorneys prosecuting criminal cases in the county where the judge is sitting.

CANON 4**A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRAJUDICIAL
ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL
OBLIGATIONS**

**A. Extrajudicial Activities in General. A judge shall conduct all of the
judge's extrajudicial activities so that they do not:**

- (1) cast reasonable doubt on the judge's capacity to act impartially as a
judge; or**
- (2) [reserved]**
- (3) interfere with the proper performance of judicial duties.**

Commentary:

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives. Nevertheless, such activities must not be undertaken in such a way as to cast reasonable doubt on the impartiality of the judge. Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions that may do so include jokes or other remarks, made in a public setting, that demean individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status. See Section 2C and accompanying Commentary. Moreover, the appropriateness of undertaking extrajudicial activities or of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial.

B. Avocational Activities. Subject to the requirements of this Code, a judge may speak, write, lecture, and teach concerning legal and nonlegal matters and may participate in legal and nonlegal activities.

Commentary:

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the integrity of the legal profession and to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the

extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law. The reference to judges speaking about non-legal subjects and participating in non-legal activities is added for the sake of completeness to make it clear that ordinarily a judge's social and recreational activities do not raise an issue under the Code.

C. Governmental, Civic or Charitable Activities.

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law*, the legal system, or the administration of justice or except when acting pro se.

(2) A judge shall not accept appointment to any governmental position, including a governmental committee or commission, that is concerned with matters other than the improvement of the law*, the legal system, or the administration of justice. A judge may, however, represent a country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities.

(3) A judge may serve as an officer, director, trustee, or non-legal advisor of an organization or agency devoted to the improvement of the law*, the legal system, or the administration of justice; or of any educational, religious, charitable, fraternal, or civic organization that is not conducted for profit or for the economic or political advantage of its members, subject to the following limitations and the other requirements of this Code.

(a) A judge:

(i) shall not contribute to, or be a member of, such an organization, except a religious organization, if it is likely that the

organization will be engaged frequently in adversary proceedings in the court on which the judge serves; and

(ii) shall not serve as an officer, director, trustee, or non-legal advisor of such an organization if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be engaged frequently in adversary proceedings in any court, state or federal, in the Commonwealth.

(b) A judge as an officer, director, trustee, non-legal advisor, or member of an organization described in Section 4C(3) or in any other capacity as to such an organization:

(i) shall not participate in the management and investment of the organization's funds, shall not assist such an organization in planning fund-raising, and shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law*, the legal system, or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Section 4C(3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism;

(iv) shall not use or permit the use of the prestige of judicial office for

fund-raising or membership solicitation.

(4) Subject to the requirements of this Code, a judge may serve as an officer, director, trustee, or non-legal advisor of an organization composed entirely or predominantly of judges that exists to further the educational or professional interests of judges. A judge may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but may not personally participate in the solicitation of funds, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority.

Commentary to Section 4C(1):

See Section 2B regarding the obligation to avoid improper influence.

Commentary to Section 4C(2)

Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system, or administration of justice as authorized by Section 4C(3). Judges should not accept governmental appointments that are likely to interfere with their effectiveness and independence. Any permission to accept extrajudicial appointments contained in this Code is subject to applicable restrictions relating to multiple office-holding contained in the Constitution of the Commonwealth. See Part 2, Chapter 6, Article two for restrictions on justices of the Supreme Judicial Court and judges of the Probate and Family Court and Article VIII of the Amendments to the Constitution.

Section 4C(2) does not govern a judge's service in a nongovernmental position. See Section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system, or the administration of justice and with

educational, religious, charitable, fraternal, or civic organizations not conducted for profit. For example, service on the board of a public hospital or public education institution, unless it is a law school, would be prohibited under Section 4C(2), but service on the board of a public law school or any private educational or other institution described in Section 4C(3) would generally be permitted under Section 4C(3).

Commentary to Section 4C(3):

Section 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system, or the administration of justice; see Section 4C(2). As an illustration of the need to be cognizant of all provisions of the Code, service by a judge on the board of an organization described in Section 4C(3) may be prohibited under Section 2C if the organization practices invidious discrimination or under Section 4A if service on the board otherwise casts doubt on the judge's capacity to act impartially as a judge.

Commentary to Section 4C(3)(a):

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated as an officer, director, trustee, or non-legal advisor to determine if it is proper for the judge to continue the affiliation. For example, non-profit hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that imply commitment to causes that may come before the courts for adjudication.

A bar association is an organization "devoted to the law, the legal system, or the

administration of justice” and therefore qualifies as an organization on which a judge may serve as an officer, director, trustee, or non-legal advisor. That permission, however, is qualified by the requirement in Section 4A that such service not “cast reasonable doubt on the judge’s capacity to act impartially as a judge” and that it not “interfere with the proper performance of judicial duties.” For example, many bar associations have become active in litigation, filing amicus briefs that take sides on a wide range of controversial issues. The more that a judge takes a leadership role or a role as spokesperson in such an organization, the more likely it is that the restrictions contained in Section 4A would prohibit assuming one of the positions mentioned in Section 4C(3). The same considerations would also hold true with respect to holding office in the other organizations mentioned in Section 4C(3).

Commentary to Section 4C(3)(b):

Solicitation of funds for an organization and solicitation of memberships involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge may solicit membership for or endorse or encourage membership efforts of an organization devoted to the improvement of the law, the legal system, or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism.

Use of an organization letterhead listing a judge’s name for fund-raising or membership solicitation violates Section 4C(3)(b). A judge must also make reasonable efforts to ensure that court personnel and others subject to the judge’s direction and

control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

A judge must not be a speaker or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code. A fund-raising event is one where the sponsors' aim is to raise money to support the organization's activities beyond the event itself. A laudatory reference to a judge, not announced in advance, does not make the judge a "guest of honor" for purposes of this rule. (Judges should also consult the testimonial dinner law, G. L. c. 268, § 9A in relevant cases.)

Commentary to Section 4(C)(4)

A judge may also engage in substantial leadership and budget activities with respect to the judge-controlled organizations described in Section 4C(4), but may not engage in personal solicitation of funds except from other judges over whom the judge does not exercise supervisory or appellate authority. However, the fund-raising activities of judge-controlled organizations must be carried out in a way that does not violate other provisions of this Code, such as Sections 2A and 2B. The names of those who contribute or decline to contribute must not be disclosed publicly or to the judges in the organization, and that policy must be disclosed to those solicited. In some circumstances, fund-raising, even if anonymous, might subsequently require recusal of a judge because of the risk of the appearance of impropriety should the fact of a substantial donation by a party or its lawyer become known.

D. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, that may interfere with the proper performance of the judge's judicial position, that may reasonably be perceived to

exploit the judge's judicial position, or that may involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) Subject to the requirements of this Code, a judge may hold and manage investments, including real estate, and receive compensation as set forth in Section 4H, but shall not serve, with or without remuneration, as an officer, director, manager, general partner, advisor or employee of any business.

(3) [reserved].

(4) A judge shall manage his or her investments and other financial interests to minimize the number of cases in which disqualification is required or advisable. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household* not to accept, a gift, bequest, favor, or loan from anyone except for:

(a) a gift incident to public recognition of the judge, provided the value of the gift does not exceed the amount requiring reporting under Section 4D(5)(h) and provided the donor is not an organization whose members comprise or frequently represent the same side in litigation (or is not an individual or individuals so situated); a gift of books, tapes and other resource materials supplied by publishers on a complimentary basis for official use; or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law*, the legal system, or the administration of justice, provided

that if the value of the invitation and any food, travel, and lodging associated with the invitation exceeds the amount requiring reporting under Section 4D(5)(h), the value of the invitation and such associated items shall be reported under Section 4H.

(b) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other member of the judge's family residing in the judge's household*, including gifts, awards, and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award, or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would require disqualification under Section 3E.

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value exceeds \$350.00, the judge reports it in the same manner as the judge reports compensation in Section 4H. However, a

gift, bequest, favor, or loan of the type set forth in Sections 4D(5)(a), 4D(5)(b), 4D(5)(f) or 4D(5)(g) that does not meet the requirements set forth there may not be accepted under the authority of this Section 4D(5)(h).

Commentary to Section 4D(2)

For new judges, Section 6B postpones the time for compliance with certain provisions of this Section in some cases.

Participation by a judge in financial and business dealings is subject to the general prohibition in Section 4A against activities that tend to reflect adversely on impartiality or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Section 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1.

Commentary to introductory clause to Section 4D(5):

Because a gift, bequest, favor, or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

Commentary to Section 4D(5)(a):

An exception allowed under Sections 4D(5)(a) through 4D(5)(g) is not subject to the qualification and reporting requirements of Section 4D(5)(h), but is otherwise subject to the requirements of this Code. See in particular Sections 2A, 2B and Section 4A(1).

Examples of organizations which frequently represent the same side in litigation are a bar association comprised of insurance defense attorneys or of plaintiffs' personal injury attorneys. In addition to applying to organizations, the prohibition also applies to a public recognition gift from an individual or individuals who frequently comprise or represent the same side in litigation.

The acceptance of invitations is an area of special sensitivity, and judges are reminded particularly in that context of the interrelation of all the provisions of the Code, particularly Sections 2A, 2B, and 4A(1), and the avoidance of the appearance of impropriety as well as impropriety itself. All the facts relating to the invitation must be examined by the judge, including the identity of the donor, the amount of time to be devoted to bar-related or similar activities at the event, the costs assumed by the invitor, the duration of the function, and its locale. Examples of facts that singly or in combination, could suggest conflict with Sections 2A, 2B, and 4A(1), are a function during tourist season, a lavish function, a function in a popular tourist locale, or a function distant from the Commonwealth. If there is such a conflict, the taint of impropriety or its appearance exists no matter how assiduously the judge would in fact attend to bar or similar activities at the function. The fact that a function is reported under Section 4H does not obviate the examination just described.

Commentary to Section 4D(5)(c):

In accepting ordinary social hospitality from members of the bar, a judge should

carefully weigh acceptance of the hospitality to avoid any appearance of bias.

Commentary to Section 4D(5)(d):

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Section 4D(5)(e).

Commentary to Section 4D(5)(e):

The reference to a "close personal friend" is intended to contrast with someone who is a professional or business friend.

Commentary to Section 4D(5)(h):

Section 4D(5)(h) prohibits judges from accepting gifts, bequests, favors, or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, bequests, favors, or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

Under the last sentence of Section 4D(5)(h), some gifts may not be accepted even if they meet the requirements of Section 4D(5)(h). For example, a gift incident to public recognition of the judge in excess of the reporting amount in Section 4D(5)(h), or a loan on terms available only to judges, may not be accepted even though the donor or lender is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; but extraordinary social hospitality, or a gift from a friend not for a special occasion, may be accepted if the donor is not a party or

other person who has come or is likely to come or whose interests have come or are likely to come before the judge (and the judge reports the gift if the amount requires it.)

E. Fiduciary* Activities. A judge shall not serve as an executor, administrator, trustee, guardian, or other fiduciary*, except for the estate, trust, or person of the judge’s spouse, domestic partner, child, grandchild, parent, or grandparent, as well as another relative or person with whom the judge maintains a close familial relationship. As such a family fiduciary* a judge is subject to the following restrictions:

(1) The judge shall not serve if such service will interfere with the proper performance of judicial duties;

(2) The judge shall not serve if it is likely that as a fiduciary* the judge will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) While acting as a fiduciary* a judge is subject to the same restrictions on financial activities that apply to the judge in the judge’s personal capacity.

Commentary:

For new judges, Section 6B postpones the time for compliance with certain provisions of this Section in some cases.

Acting under a durable power of attorney or health care proxy are examples of service by the judge as an “other fiduciary” within Section 4E.

The restrictions imposed by this Section may conflict with the judge’s obligation

as a fiduciary. For example, a judge shall resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Section 4D(4).

F. Arbitration and Mediation. A judge shall not act as an arbitrator or mediator in a private capacity.

G. Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se.

Commentary:

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before, or other dealings with, legislative and other governmental bodies. In acting pro se, a judge must not abuse the prestige of office to advance the interests of the judge. An illustration of such abuse would be appearing before a local zoning board in a matter relating to the judge's property and referring to the judge's judicial capacity.

H. Compensation, Reimbursement, and Reporting

(1) Compensation and reimbursement. A judge may receive compensation and reimbursement of expenses for the extrajudicial activities not prohibited by this Code, if the source or amount of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the

appearance of impropriety, subject also to the following restrictions:

(a) Compensation shall not exceed a reasonable amount.

(b) Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's guest. Any payment in excess of such an amount is compensation.

(2) Public reports. A judge shall report on or before April 15 of each year, with respect to the previous calendar year, the date, place, and nature of any activity for which the judge received compensation, the name of the payor, the amount of compensation so received, and such other information as is required by the Supreme Judicial Court or by law*. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extrajudicial compensation to the judge. The judge's report shall be filed as a public document in the office of the Administrative Assistant to the Supreme Judicial Court (G. L. c. 211, § 3A).

Commentary

See Section 4D(5)(h) regarding reporting of gifts, bequests, favors and loans.

The Code does not prohibit a judge from receiving compensation from teaching or from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge shall ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial. An illustration of

the requirement that compensation not exceed what a person who is not a judge would receive for the same activity would be that a judge's compensation for teaching a law school course shall not be higher than that of other teachers merely because of the judge's status as a judge.

I. Disclosure of a judge's income, debts, investments, or other assets is required only to the extent provided in this Canon and in Sections 3E and F or as otherwise required by law*.

Commentary

A judge has the rights of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations are established by law and this Code. Disclosure of economic or relationship interests is required under Section 3E if a disqualification is to be overridden because of necessity and under Section 3F if remittal of disqualification is to be considered.

CANON 5

A JUDGE SHALL REFRAIN FROM POLITICAL ACTIVITY

A. Political Conduct in General.

(1) A judge shall not:

(a) act as a leader of, or hold any office in, a political organization*;

(b) make speeches for a political organization* or candidate or

publicly endorse a candidate for public office;

(c) solicit funds for, or pay an assessment or make a contribution to, a political organization* or candidate, attend political gatherings, or purchase tickets for political party dinners, for functions conducted to raise money for holders of political office or for candidates for election to any political office, or for any other type of political function.

(2) A judge shall resign from the judicial position held when the judge becomes a candidate either in a primary or in a general election for elective office. On assuming a judicial position, a judge shall resign any elective public office then held.

(3) A judge may engage in activity in support or on behalf of measures to improve the law*, the legal system, or the administration of justice.

Commentary:

While it is recognized that judges have the right to vote, participate as citizens in their communities, and not be isolated from the society in which they live, those rights must be viewed in light of Section 2A which requires that a judge conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

A judge's participation in partisan politics may give the appearance of affecting his or her judicial actions or might actually affect the judge's judicial actions. A judge's endorsement of a candidate or appearance of an endorsement might well be viewed as judicial endorsement, and thus would advance the "private interests" of that person. Such activity would also create doubt about a judge's impartiality towards persons, organizations, or factual issues that may come before the judge.

A judge may not attend an event that is run to raise money or gather support for or

opposition to a political candidate or party. The judge may not attend an event that is partisan in nature. The judge may not engage in any partisan displays of public support, such as driving an automobile with a partisan bumper sticker, posting a campaign sign outside of the judge's residence, signing nomination papers for a political candidate or a ballot issue, carrying a campaign sign, distributing campaign literature, or encouraging people to vote for or give money to a particular candidate or political party.

A judge has the right to be an informed citizen. As such, it would be permissible for a judge to attend an event that is non-partisan, such as a forum that is open to all candidates and is intended to inform the public. Furthermore, in order to participate in an electoral primary, a judge may register as a member of a political party, but may not permit or encourage anyone to make that registration known.

A judge may not avoid the restrictions imposed by this Section by making contributions through a spouse or other family member. Political contributions by the judge's spouse must result from the independent choice of the spouse, and checks by which such contributions are made shall not include the name of the judge.

CANON 6

COMPLIANCE WITH THIS CODE

A. Retired Judges

(1) A judge whose name has been placed upon the list of retired judges eligible to perform judicial duties, pursuant to G. L. c. 32, §§ 65E-65G, shall comply with all provisions of this Code during the term of such eligibility.

(2) A judge who has retired or resigned from judicial office shall not, for a

period of six months following the date of retirement, resignation, or most recent service as a retired judge pursuant to G. L. c 32, §§ 65E-65G, perform court-connected dispute resolution services except on a pro bono publico basis, enter an appearance, or accept an appointment to represent any party in any court of the Commonwealth.

B. Time for Compliance

A person to whom this Code becomes applicable shall comply immediately with all its provisions except Sections 4D(2), 4D(3), and 4E and shall comply with those Sections as soon as reasonably possible and in any event within one year.

EFFECTIVE DATE OF COMPLIANCE

The effective date of compliance of this Code is October 1, 2003.